Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Re: ***Docket Nos. R-1366 and R-1367: California Community Groups Comment on Proposed TILA Regulations***

Dear Ms. Johnson:

A year and a half ago, several California community groups joined to respond to the Federal Reserve Board's request for comments on proposed HOEPA rules. We urged the Board to ban steering, yield spread premiums ("YSP"s), and the use of English-only documents in loan transactions negotiated in non-English languages. We also urged the Board to take further steps to protect consumers from Home Equity Lines of Credit ("HELOC"s). We are pleased to see that the Board's current proposed TILA regulations reflect many of these concerns.

We commend the Board for taking steps to further regulate a widely unregulated marketplace, including through the proposed TILA regulations. But just as we did in our last letter, we urge the Board to take bolder action.

Today, 6 of the top 10 metro areas with highest foreclosure rates in the nation are in California. We expect the situation to worsen as joblessness and option ARM recasts grow in our state. Recent history has shown all too clearly that without robust regulation of the home loan market, we cannot hope to prevent the further waves of foreclosure of millions of family homes and further deterioration of our neighborhoods.

In the introduction to the proposed revisions to Regulation Z, the Board emphasizes that one of the purposes of TILA is to provide meaningful disclosures of credit terms that will enable consumers to compare credit terms available in the marketplace more readily and avoid the uninformed use of credit. In our roles as nonprofit legal service organizations, advocacy organizations, counseling agencies, community development corporations, housing providers, and local government, we witness daily the extent to which consumers are suffering from the uninformed, and misinformed, use of credit over the last few years.

We believe that to fully protect consumers and their communities as we move through and beyond the current crisis, the Board must take more aggressive steps, as outlined below.

No Preemption.

As a threshold matter, we urge the Board to clarify that the proposed regulations are not intended to preempt any state laws that speak to the same issues. Rather, the Board should state that Regulation Z is a floor, not a ceiling, on consumer protection in the mortgage market. Regulatory preemption of state law has had the profound and devastating effect of allowing the largest financial institutions with the greatest impact on communities to engage in predatory practices, while also stifling state legislative efforts for fear of disadvantaging state-regulated entities as compared to federally chartered ones.

Disclosure Forms.

We strongly support the adoption of the new Truth in Lending disclosure forms proposed by the Board in place of the currently mandated TILA disclosure forms.

The addition of information comparing the rate offered to a borrower to rates available to other borrowers with a range of credit scores should help borrowers make more informed decisions, especially the many borrowers who do not seek loans from multiple brokers or lenders.

The replacement of the overlong (and mind-numbing) CHARM booklet with a clearer and shorter form is a vast improvement, especially since the newer form includes information about the borrower's actual loan product instead of the generic (and therefore confusing and even misleading) information previously required. Although many borrowers may still need additional explanation of the mechanics of ARM loans, we believe these forms will go a long way to educating borrowers about the way ARMs actually work.

We are particularly pleased to see the addition of a requirement that disclosures to borrowers include the highest monthly payment they may have to make during the life of an ARM loan. The omission of this information from the current TILA disclosures has, frankly, baffled us. In our experience, borrowers generally believe that the payment schedules listed on the current TILA disclosure form actually reflect their future payments, when in fact they are calculated based on the fully indexed rate at the time of origination, a rate that is guaranteed to change. Our hope is that the inclusion of the highest possible payment information will help borrowers understand that the payment schedule for an ARM loan is an artificial construct and that their payments may go much higher than indicated there.

Finally, although the proposed disclosure forms relating to pay option ARMs are a definite improvement over the current requirements, our view is that **the pay option ARM loan product should be banned entirely**. This loan product has proven to be confusing and dangerous for borrowers. As recent events show, making this type of loan product available to the average consumer poses a grave risk both to individual borrowers' financial well-being and to the financial system as a whole that is not offset by any commensurate benefit.

APR calculation.

We agree with the Board's proposal to revise and simplify the calculation of the finance charge for closed-end mortgage transactions under TILA. We agree that these changes will better serve to make the real "cost of credit" clear to borrowers, and to allow them to make better informed choices. Fees that were previously excluded from the definition of finance charge under TILA and therefore concealed in basic disclosures often run in the thousands of dollars. Their non-disclosure creates confusion for borrowers who do not just "comparison shop" between several types of credit, but who also must make informed decisions about whether or not accepting new debt is a good decision in the first place.

We also hope that the proposed rules might help to control the overall cost of credit for borrowers by motivating creditors to control third-party closing costs in order to keep loans below TILA high cost loan protection triggers.

In addition to the proposed amendments, **the Board should clarify its position with regard to the inclusion of prepaid monthly payments as prepaid finance charges for the calculation of the loan APR.** We are seeing an increasing number of high-cost lenders demand up to 12 months of payments out of the loan proceeds, which effectively reduces the amount of credit extended. The creditors use these prepaid payments to inflate the loan amount without increasing their risk, while failing to subtract the payments from the amount financed, and therefore making the loan appear far less expensive than it actually is. Current Regulations are ambiguous as to the classification of prepaid payments when they are disguised as "required deposits." The Board should clarify that loan payments prepaid from loan proceeds, regardless of form, are "points and fees" and prepaid finance charges for the purposes of APR calculation under TILA.

We also strongly believe that **the Board's proposed amendments on APR calculation should not be limited to closed-end credit transactions secured by real property or a dwelling.** The same justifications offered by the Board in simplifying the current "patchwork" of fee exclusions and clarifying the true cost of credit are undermined by applying them to only one category of credit.

Ban Yield Spread Premiums.

We strongly support the elimination of the YSP. Consumer advocates have long held the position that payment of the YSP to brokers by the lenders is an incentive to place borrowers in loans with higher interest rates and pre-payment penalties. We appreciate the Board's recognition that "creditors' payments to mortgage brokers are not transparent and are potentially unfair to them." (Federal Register Vol. 74, No. 164 at 43280). We share the Board's belief that disclosure of payments to the broker by creditors is insufficient to avoid the harm caused by the practice of YSP.

We strongly support the elimination of compensation based on loan terms. By eliminating a compensation structure which varies with each loan given, the Board will effectively stop the incentive system now in place. Consumer advocates routinely see borrowers placed in loans which are not in their best interest, ill-advised and unaffordable. Compensation to the loan originator based on a *uniform payment structure*, regardless of the terms of the individual loan, will go far to reduce the risk the loan originator will place his or her interests above those of the consumer.

We also applaud the Board's related proposal requiring that compensation by a creditor to a loan originator must be applied to *every loan* funded regardless of the terms of each loan. While the system of compensation may be modified or adjusted, such changes cannot and *should not* occur on a loan by loan basis but pursuant to a periodic review. **We urge the Board to define more carefully when and under what circumstances the system of compensation for a loan originator can be altered by the creditor.**

Consumer advocates share a concern about the lack of transparency in the new system for determining compensation to the loan originator. The new parameters set forth under the proposed regulation include such factors as loan volume, loan performance, hourly rate of pay and whether the borrower is a new or existing customer. **We urge the Board to go beyond the proposed record retention requirements and specifically require creditors to document, substantiate and disclose the factors which support their respective systems of compensation to loan originators.** Without such documentation and disclosure, the Board and the public cannot be adequately assured that creditors will not establish compensation systems that work to by-pass the new prohibition against compensation based on loan terms.

The Board should not exempt loan amount from the definition of "Loan Term". The defining feature of the current incentive system between creditors and brokers is that compensation is determined on a *loan by loan basis*. Allowing compensation based on the loan amount perpetuates the system of incentives that has led borrowers to borrow more than they actually need or can afford, in many cases because they were persuaded by a loan originator that paying off unsecured debts with new debt secured by their homes made financial sense for them. Consumer advocates believe that allowing compensation based on loan term would result in loan originators steering borrowers to loans with higher balances than necessary. Borrowers may falsely believe a higher loan amount is affordable because the loan originator is steering him or her to a loan with a low introductory rate and monthly payment. Compensation based on loan amount would undermine the Board's stated goal of preventing unfair practices to the borrower.

We believe there is nothing unduly restrictive in prohibiting compensation based on loan amount. Creditors are dependent upon brokers and loan originators for a bulk of their business. The financial industry has created a variety of lending products unseen in previous years. Consumer advocates are confident creditors can create new systems of compensation which will allow them to compete fairly with other creditors for the business of brokers. Further, the comparison to other players in the mortgage market as a basis for allowing compensation based on loan term is a false comparison. Loan originators, especially brokers, are in the unique position of working directly with borrowers. No other participant in the mortgage process influences loan selection by the borrower so directly.

We strongly support the Board's proposal to prohibit dual sources of compensation to the broker. We urge the Board to adopt the prohibition of compensation from both the consumer and another source. Allowing only one source of payment to the broker simplifies the loan transaction for the borrower and makes transparent the total compensation the broker is to receive. Our experience with borrowers is consistent with the observation of the Board that disclosure of dual compensation is insufficient to protect borrowers because they do not understand the compensation system to brokers and how it relates to their loan.

Consumer advocates suggest the Board clarify that payment to the broker directly can be financed by the borrower. Comments on the proposed regulations submitted by mortgage brokers suggest that borrowers will be required to pay cash to compensate the broker and therefore cannot afford to get loans, which is not our understanding of the effect of these new rules.

Additionally, **we urge the Board to clarify that any compensation paid directly to the broker, regardless of what it is labeled, will trigger the prohibition against also receiving payment from another source.** We are concerned brokers and creditors will argue that fees such as document preparation, or perhaps newly created fees payable to the broker, do not prohibit additional compensation by the creditor or another source.

Extend the new restrictions to all loan originators, not just brokers. We support the Board's intention to extend the coverage of prohibited practices to loan officers and other employees of creditors. Additionally, the new regulations should make clear what exactly defines "compensation" to ensure creditors cannot circumvent the rules with creative definitions of their own.

Ban Steering.

The steering of borrowers into unsuitable products has been a common feature of the mortgage market for past several years. Subprime, option ARM and low documentation mortgage loans have been marketed heavily to people of color, as well as communities with a high incidence of limited English proficiency. These problematic products have been marketed heavily to residents of rural communities who have fewer choices in terms of where they can go for a loan. And these loans have also been marketed heavily to seniors, who, as a group, may be perceived to be easier to coerce into taking a loan that is not in their best interest and who may also have more limited options in shopping for a loan.

Discrimination in our credit markets is a reality, and fair housing enforcement must be elevated on the list of regulatory priorities. A *Wall Street Journal* analysis found that 61% of subprime borrowers in 2006 had credit scores that were high enough to qualify them for prime loans. The Board has noted previously that much of the lending disparities by race and ethnicity can be explained by the fact that people of color are more likely to use a higher-cost subprime lender. The Board has also noted that the greater use of higher cost lenders by people of color may reflect that lower-cost prime lenders are not serving these communities well, or that these borrowers are being improperly steered into higher-cost loan products.

Several reports provide support for the extensive anecdotal evidence in demonstrating how people of color and their communities were targeted for unsuitable loan products. Recent surveys of housing counseling agencies show that borrowers now trying to avoid foreclosure were often sold loans in one language with documents written in another, and that foreclosure prevention efforts may be resulting in unequal outcomes for borrowers of color, possibly due to a variety of reasons.

The Board here solicits comment on whether it should adopt a rule that seeks to prohibit loan originators from steering consumers to loans based on the fact that the originator will receive additional compensation, when the loan may not be in the consumer's best interest. The Federal Register discussion on this point raises the specter of the supposed difficulty in determining the consumer's best interest since consumers may value different loan terms differently. This discussion strikes us as more theoretical than real for many consumers who are not advised as to the advantages or disadvantages of various loan terms. Indeed, many consumers are not provided with any choices by loan originators, but are instead steered towards particular products. In other words, it may be that some consumers would choose to take out a loan with a prepayment penalty in exchange for a lower rate, but most consumers we see are unaware they had such a choice, and we doubt that many would actually obtain the benefits of this "bargain," i.e. a lower rate.

We support the Board's proposal to clamp down on steering, but feel it should be strengthened:

- **The Board should prohibit steering borrowers into loans that are not in the consumer's "best interest."** A standard that focuses merely on the "interest" of the consumer is too low a threshold that is too easily met. Loan originators could easily argue that any loan provision they arrange is somehow in the interest of the consumer. Borrowers reasonably rely on brokers to get them the best loan for which they qualify. The standard must reflect this and speak to the "best interest" of the borrower.

- **If a loan originator does not offer loan products that are in the best interest of the consumer and for which the consumer might reasonably qualify, the loan originator should be obligated to so inform the consumer.** For example, a broker that only arranges subprime loans should be required to inform any prime borrowers that they may qualify for lower cost credit from other loan originators. To hold otherwise frustrates the purposes of TILA to promote consumer understanding and choice. In Los Angeles in 2007, the market share of high-risk lenders, subprime lenders that later went out of business, was 9.5 times higher in neighborhoods with over 80 percent residents of color than it was in neighborhoods with less than 10 percent residents of color.

- **The elements of the proposed safe harbor provision – presenting three loan options with the lowest rates and points to the borrower - should be a requirement under these rules, not merely a safe harbor.** Currently, borrowers are not necessarily presented with several loan options, and they reasonably rely on their brokers to offer them the best or cheapest option for which they qualify.

- **Anti steering provisions should also apply to HELOCs.** The Board has been far too hesitant to impose consumer protection regulation over the past few years, and this was a primary cause of the current mortgage and financial crisis. The Board recognizes that steering may be an issue with HELOCs. It should therefore extend proposed protections to HELOCs unless there is clear evidence that there is no steering problem and that the burdens of imposing such a requirement would be unduly onerous to HELOC lenders. We do not think either is the case. End the endless exemptions from regulation for HELOCs, and protect consumers.

- Further, given the significant evidence of systemic fair lending problems related to steering discussed above, **the Board, as regulator of Bank Holding Companies, must also vigorously enforce fair lending laws and investigate all pricing disparities within and across lending affiliates that are evident from HMDA and other preliminary analysis.**

Translation Requirements for TILA Disclosures.

We are encouraged to see the Board solicit comment on whether it should use its rulemaking authority to require creditors to provide translations of credit disclosures. This is a critical issue for consumers in California and nationally, and we urge the Board to act swiftly before more damage is done to immigrant communities.

The Board should use its rulemaking authority to require creditors to provide translations of credit disclosures.

As consumer advocates who have repeatedly seen the financially and personally devastating results for limited English proficient ("LEP") borrowers who are misled into taking out inappropriate mortgages, we are convinced that the Board must take this step, and take it as soon as possible and in the most effective manner feasible. Indeed, in our view this step is considerably overdue; our recommendation here echoes one that several of the authors of this letter made in a letter to the Board in 2006.

We speak to this issue as Californians, working and living in the most linguistically diverse state in the country. Since California is often a demographic bellwether for the rest of the country, it seems likely that it will not be long before America as a whole reflects this diversity as well. The Board correctly notes that Census data shows that 18 percent of Americans speak languages other than English in their homes; almost 40 percent of Californians fall into this category, more than half of whom speak English less than "very well."

When LEP borrowers who seek to enter the credit mainstream and achieve their piece of the American Dream by securing a mortgage receive translations of the key terms of their loans, all parties to the transaction, the credit system as a whole, and the larger economy are well served. Of pre-eminent importance, of course, is the fact that borrowers are more likely to understand this very complex and important transaction when the terms are provided in their primary language. But creditors clearly benefit as well. In addition to having a better-informed consumer—a laudable objective in its own right—borrowers who receive timely, accurate translations will, should litigation ensue, have less chance of successfully asserting that they did not understand the terms of the loans when they were consummated. And it is well documented that the subprime meltdown that precipitated the global credit crisis was fed by borrowers who received wildly inappropriate loans which they often did not understand.

The failure to provide credit disclosure translations is unfair and deceptive, and it impedes the informed use of credit.

In our experience, it can certainly be unfair and deceptive for a lender or broker who has negotiated a loan in a non-English language to issue English-only documents to the borrower. Some lenders are engaging in a deliberate effort to deceive by not providing a translation. Even as to those who are not, though, it is obvious that when a borrower is engaging in a sophisticated financial transaction—likely to be the largest financial transaction of his or her lifetime—certainty regarding loan terms is an essential element of fairness.

As set forth in the examples below, we have repeatedly seen this scenario play out, resulting in widespread and significant harm to individual families and the communities they live in. It is laudable for lenders to have a presence in these communities and provide them with access to responsible mortgage lending. However, if lenders are going to conduct business in the non-English language that community members speak, it is irresponsible on several levels for them to present documents for review and signature that are entirely in a language that the lender knows full well the borrower cannot understand. Such borrowers are categorically less well informed than English-speaking borrowers and this inequity should not be allowed to take place.

Potential litigation Issues: Admissibility and Tolling of Rescission Periods

As California advocates, we are most familiar with California Civil Code § 1632 ("Section 1632"). Under that law, translations are admissible "only to show that no contract was entered into because of a substantial difference in the material terms and conditions of the contract and the translation." Thus, the translation requirement does not open up a massive new avenue for litigation, since a court presented with the document could only compare it to the English-language version to see if there are material discrepancies. It would not, for instance, make any oral negotiations between the lender and borrower (in whatever language) any more or less probative of the actual terms of the loan. And Section 1632 expressly provides that "[t]he terms of the contract or agreement which is executed in the English language shall determine the rights and obligations of the parties."

It is conceivable that an inaccurate translation could toll the statute of limitations. In cases alleging violations of Section 1632 where borrowers were unable to discover violations of their rights under consumer protection statutes due to their inability to read and understand the English-only loan documents, some courts have tolled the statute of limitations. In those cases, no translation was supplied at all; however, if an erroneous translation hid the fact that illegal terms were part of the loan, equitable tolling of the statute of limitations might well be appropriate.

Failure to provide the required translations under Section 1632 renders the loan at issue subject to rescission. This is an appropriate remedy, because it can be assumed that the borrower who negotiated the loan in a non-English language did not understand the terms of the English-only documents that the creditor provided. Thus, no true "meeting of the minds" took place and a valid contract was not created. If the Board adopts a similar translation rule, rescission should be the remedy for violation of this rule, and any equitable tolling of the statute of limitations should apply to this remedy as well in an appropriate case.

Federal Regulation is Needed to Supplement Existing State Law

State laws such as California's Section 1632 can be worthwhile and effective tools in that they provide a remedy for non-compliance through litigation brought by individual borrowers (see below discussion of individual cases). However, we believe that federal regulation and enforcement in this area is needed to move more creditors into compliance with this important requirement.

Although California's Section 1632 has been on the books since 1976, it appears that all too many consumers are not being provided with the translations that the law requires. Significant evidence shows that many lenders continue to fail to comply with the statute. In its most recent of a series of surveys, the California Reinvestment Coalition ("CRC") asked housing counselors across the state a series of questions to gauge whether mortgage loan servicing companies are living up to their public commitments to help borrowers avoid foreclosure. Over 60 percent of responding agencies stated that they commonly saw non-English speakers (many or all of whom presumably negotiated their loans in a non-English language) who did not receive any translations of their loan. In those cases, 60 percent of the agencies noted that the loan terms that these LEP borrowers actually received were less favorable than the ones they had been promised, and 65 percent reported that the loan was unaffordable when made to the borrower. In another recent survey by Neighborhood Legal Services of Los Angeles County of Spanish-speaking homeowners, 40% of respondents did not fully understand the terms of their loan documents.

Part of this apparently widespread lack of compliance may be that originators—particularly those who operate in multiple states—are not aware of Section 1632's requirements since only a handful of states have this consumer protection measure in place. Even those that are aware of it may, erroneously or not, believe that it does not apply to loans that they originate. A uniform federal regulation would avoid this type of problem by making translation of these important disclosures a standard practice rather than a state-by-state exception.

The Scope of the Problem

It is difficult to quantify the problems caused by the lack of translation requirements with precision; however, a survey of the lending landscape as it relates to the Latino community—40 percent of whom self-reported as LEP in the 2000 Census—is helpful to illustrate how widespread the pernicious effects of this problem are.

It is well documented that over the past several years Latino homebuyers have represented "an emergent primary mortgage market (bank to consumer) that is underserved." This is particularly true in California, which has the highest number of Latino residents in the country and many counties with near-majority Latino populations.

Unfortunately, the Latino mortgage market has been very poorly served by many of the largest lenders in the county. In a study of loan data from 2005, CRC concluded that Latino borrowers were *3.6 times more likely* than white borrowers to receive a higher-cost home purchase loan. Moreover, and crucially, research done by CRC and others has shown that legitimate underwriting standards cannot fully explain why some borrowers—such as Latino borrowers—are saddled with higher-cost loans at higher rates than non-Latino whites.

> Latino borrowers are at greater risk of receiving higher-rate loans than white borrowers, even after controlling for legitimate risk factors. The disparities we find are large and statistically significant: For many types of loans, borrowers of color in our database were more than 30 percent more likely to receive a higher-rate loan than white borrowers, even after accounting for differences in risk.

In other words, evidence "suggests that weak borrower credit profiles do not fully explain why some borrowers get stuck with higher-cost home loans."

Beyond these macro-level inequities, it is also well documented that LEP borrowers were subjected to abuses at the hands of some unscrupulous lenders and brokers. For example, a judge in the Northern District of California recently decided a motion for summary judgment in a predatory lending case including violations of Section 1632 in favor of the borrowers, citing as a "particularly egregious example of some of the mortgage lending practices that ultimately culminated in the so-called subprime meltdown" the allegations that "[p]laintiffs are all individuals who speak Spanish as a first language …[who] were duped by defendants into entering into onerous loans they could not afford and did not understand."

In another California case, a Spanish-speaking couple of Latino origin was subject to criminal and civil actions for allegedly systematically preying on members of their own community by engaging in a series of unfair practices aimed specifically at people who did not speak English fluently. The complaint in the civil case alleged as follows:

> The couple—one a licensed broker and the other a salesperson—lured homeowners into their offices with promises of lowering monthly payments, allowing them to tap tens of thousands of dollars of equity, and other attractive features, all ostensibly at no cost to the borrower. All of these negotiations were in Spanish; in fact, the saleswoman became irate with her staff if they referred English-speaking borrowers to her.
>
> When these borrowers appeared at closing, they were confronted with large stacks of documents written in English with no Spanish translation. If they asked the saleswoman any questions, she became very impatient and pushed them to simply sign where she indicated.
>
> Some borrowers noticed major inconsistencies with what they had been promised despite the lack of translated documents. The saleswoman would assure them that the terms were a mistake that she would "fix" later, or that she could secure a refinance for them shortly so the terms in question were nothing to worry about.
>
> The terms of the loans in the binding English-language documents that these borrowers ended up with were far less attractive than what the saleswoman had verbally promised them in Spanish. The loans featured huge fees to the broker, adjustable rates, balloon payments, and pre-payment penalties, and borrowers often received a fraction of the cash they were promised from the transaction.

These individuals were ultimately convicted of multiple felonies for their criminal acts after prosecution by the Santa Clara District Attorney, but the borrowers—some of whom lost their homes—have yet to receive any significant recovery for these bad acts.

Other law enforcement agencies have also taken action against fraudulent conduct perpetrated against LEP borrowers. For example, in a case that was the subject of a successful civil suit and is presently being prosecuted by San Francisco District Attorney Kamala Harris, a broker negotiated a contract for a mortgage refinance entirely in Spanish but provided only English-language documents to the LEP borrowers. This allowed the broker to create a document which gave the broker an unearned $200,000 cash payout at closing, a payout that was undisclosed to the borrower.

These stories are common across California. The following example is a typical story from the Los Angeles area facing problems in the loan process follow:

> Mr. & Ms. A are monolingual Spanish-speakers who worked through a Spanish-speaking broker to get a home loan. They signed all of their loan documents in English. The

broker never translated the documents, and they never met or spoke with any representative of the bank. After making their payments for approximately two years, their payments suddenly nearly doubled. Mr. & Ms. A. went to a housing counselor and found out that the broker had had them sign a hybrid loan with a margin of 8%, despite the fact that they had good credit and could have qualified for a fixed-rate lower interest loan. The bank refused to rescind their loan and Mr. & Ms. A are now at risk of foreclosure because they are having trouble making their increased payments.

Other examples of abuse of LEP borrowers surfaced several years ago, when a series of borrowers and housing counselors testified at Federal Reserve Board hearings held in San Francisco regarding the increasing prevalence such practices. *See Building Sustainable Homeownership: Responsible Lending and Informed Consumer Choice—Public Hearing on the Home Equity Lending Market*, Federal Reserve Board (June 16, 2006), Tr. at 85, 238-39, 238-40, 242-45, 250-52 (available at http://www.federalreserve.gov/events/publichearings/hoepa/2006/20060616/transcript.pdf). These abuses have been made possible by the borrowers' lack of fluency in English and the failure of the lenders and brokers to provide translation of the loan terms. Were these terms translated in a timely fashion, these borrowers would have realized that the brokers they had put their trust in were, in fact, misleading or outright lying to them and that they should walk away from the transaction.

In short, while the number of borrowers who do not understand TILA disclosures due to their limited English proficiency cannot be precisely ascertained, the need for reforms to protect LEP borrowers from abuse by unscrupulous lenders and brokers has been made abundantly clear over the past several years. The Board should act.

TILA Disclosures;Triggers

Although the general rule under Section 1632 is that businesses must provide a translation of the entire contract when they negotiate in a non-English language, the statute allows lenders to comply with translation requirements by providing translated copies of the TILA disclosures. Such a provision seems particularly appropriate given the recent efforts by the Board and others, particularly HUD, to improve mortgage disclosures to make them more informative, readable, and clear for borrowers.

This provision and the designation of the five most-spoken non-English languages as those for which translation will be required has allowed the State to create forms for creditors' use in each of the languages, which are available on the Department of Real Estate's website. Under this model, lenders and brokers cannot legitimately claim that the translation requirements are a major cost burden, since translated forms are readily available to them free of charge.

As far as the trigger for the translations, all of the suggestions set out by the Board are reasonable. For purposes of Section 1632, the trigger for requiring a lender to provide the translated disclosures in a non-English language is the fact that the loan was negotiated primarily in that language. This approach effectively limits translation requirements to those circumstances which seem most open to abuse, because (as we have seen repeatedly) an unscrupulous bilingual lender or broker could easily perform a "bait-and-switch" on a monolingual borrower; it seems more focused than tying the requirement to advertisements or presentations. We also support the addition of a requirement that creditors provide translations to borrowers on request (regardless of what the language of negotiation was) since a borrower is in the best position to know if he or she needs translated documents.

Limited Exception for Consumers Accompanied by an Interpreter

We do not object to such an exception but we are concerned that it could easily lead to abuse if not subject to safeguards. Section 1632 provides an interpreter exception with important caveats which we urge the Board to consider as well: The interpreter must be (1) not a minor, (2) "able to speak fluently and read with full understanding both the English language" and the non-English language in which the contract was negotiated, and (3) not employed or made available by the lender.

A Translation Requirement Would Not Negatively Affect Consumers.

It has not been our experience that LEP populations have been deprived of opportunities to obtain credit based on creditors' fears of liability—indeed, the exact opposite phenomenon has taken place, with lenders and brokers targeting people who lack fluency in English for inferior loan products. A possible element in this is that creditors perceive that LEP borrowers will be less likely to sue for violations of their rights than borrowers who are fluent in English (an all-too-accurate assumption given the linguistic impenetrability of our civil justice system).

Nevertheless, this is an appropriate area of concern, especially given the severe credit contraction that has taken place in the aftermath of the global credit crisis that began in 2007. Looking forward, the sheer size of the LEP market here in California—with 40 percent of the population speaking languages other than English—would seem to make the possibility of lenders steering clear of this market unlikely. And the LEP market share looks to be increasing nationally as well; the 2000 Census showed an increase to 18 percent, up from 14 percent in 1990 and 11 percent in 1980.

If the Board adopts a requirement along the lines of Section 1632, which provides sensible triggers for translation and limits their use in litigation, it does not seem likely that LEP borrowers will be significantly deprived of responsible lending opportunities.

Translation Requirements Should Apply to Other Credit Products.

While a home purchase is likely to be the most significant financial transaction that most people will enter into in their lifetimes, other credit transactions, such as auto loans and credit cards, also have significant consequences for the clients we serve. Although our primary area of expertise is in home loans, we urge the Board to adopt translation requirements in these other contexts as well to protect the rights of LEP borrowers.

Section1632 has been applied to auto loans since its inception in 1976. The Board should consider creating a nationwide requirement in this regard.

As to credit cards, we note that the Board recently proposed changes to regulations regarding credit card disclosures, noting the importance of ensuring that "consumers who rely on credit cards are treated fairly," and calling for "greater transparency in the disclosure of the terms and conditions of credit card accounts." These same goals would be advanced by requiring translations for LEP credit card users as well as mortgage borrowers.

The Scope of the Translation Requirement.

For the translation requirement to be effective, the scope of the translation duty must be clear to all parties to the transaction. Certainly a case could be made for requiring translation of all documents that comprise the agreement that the borrower is entering into; however, such a requirement could increase the bulk to the paperwork that confronts borrowers at closing without significantly adding value to their understanding of the weighty transaction they are about to enter into. We recommend that the Board carefully consider which documents contain the most useful and essential information about the loan and its terms and then clearly delineate which specific disclosures and documents are subject to the translation requirement.

We note that the Board is proposing to require further disclosures of details relating to pay option ARM loans in servicing statements issued after loan consummation. We urge the Board to consider requiring translation of these and other loan servicing documents since they contain information crucial to borrowers' understanding and management of their home loans.

Application of Translation Requirement to Websites that Provide Early TILA Disclosures.

We have not encountered this issue to a significant extent in the communities we serve; most of our clients were introduced to the originators who eventually took advantage of them through trusted contacts at work, church, or friends. We would, however, support a regulation requiring translation if the website in question contains a significant amount of non-English content, or if a borrower makes an email query to the site in a non-English language to which the site operator responds in kind.

Languages to Include in the Translation Requirement.

Under Section 1632, the five most common non-English languages spoken in California are subject to the translation requirements. Based on the 2000 Census, these languages are Spanish, Chinese, Tagalog, Vietnamese, and Korean, which are spoken by approximately 83 percent of all Californians who speak a language other than English in their homes.

In general, the Board should follow 1632's sensible methodology for selecting which languages trigger the translation requirement. That is, the Board should look to national Census data to determine which non-English languages are most spoken, seeking to include as large a percentage of the population that speaks a language other than English in their homes as possible.

To make this requirement even more specifically targeted to LEP borrowers, we would encourage the Board to consider not just the percentage of people who speak a given non-English language at home, but also the percentage of those speakers who are reported in the Census as speaking English less than "very well." In addition, since the national linguistic diversity is even greater than California's, the Board should include as large a number of languages as possible (including, but not limited to, the five languages covered by Section 1632).

Expand protections for HELOCs.

The impact of HELOCs on the foreclosure crisis cannot be understated. Last year, we encouraged the Board to include HELOCs in the definition of higher-priced mortgages to reflect the fact that the industry had been pushing HELOCs as "piggy-back" mortgages in combination with traditional first lien mortgages, functioning as a closed-end, subordinate mortgage. For example, we noted that in 2006, more than one-third of California home purchasers used piggy-back loans for that purchase. Additionally, homeowners have been induced to borrow against their equity through the use of HELOCs that function as closed end loans. We noted that these industry practices have effectively exploited a HELOC loophole in Reg. Z coverage, a prime example of how the market has outpaced regulation. We continue to believe that HELOCs can be used to take advantage of borrowers for whom these products are not suitable.

At the same time, HELOCs can be an important source of credit for many borrowers, including homeowners who also own a business. Due in part to inadequate protections in federal and state law, some HELOCs were imprudently underwritten and propelled some homeowners towards foreclosure. For homeowners who are also business owners, these problematic loans also strained the business. Business owners who are struggling with home equity debt may be forced to lay off employees, or the business may fail. As with all foreclosures, foreclosures of homeowner/business owners have broader impacts on society than just on the borrower alone. At a time when our economy is going through a jobless recovery, we need to pay special attention to small businesses that are a huge engine for job creation.

In fact, a recent survey by Bornstein & Song and MerchantCircle found that more than one-third of all California small business owners took out risky or toxic mortgages, that many of these owners are at risk of losing their homes and/or their businesses, and that this could result in the loss of 2.1 million small business jobs in California.

Beyond poor underwriting, HELOCs have hurt homeowners and small business owners by their terms and the ability of lenders to seemingly arbitrarily reduce or cancel lines of credit. As one example, Korean Churches for Community Development in Los Angeles reports that 80% of the borrowers it counsels have HELOCs, where many community members rely on HELOCs to purchase inventory and maintain cash flow. Many of KCCD's borrowers experienced financial hardship and required counseling BECAUSE OF the lowering of HELOC credit limits or cancelations of HELOCs. When business owners see HELOCs cut or cancelled, it hurts sales and profits, which puts pressure on their ability to pay their first mortgage and pushes them towards foreclosure.

Additionally, when HELOCs are used for business purposes, there should be a way to list the business as a borrower for credit purposes so that the business itself can build its credit. This would make it easier for small businesses to qualify for small business loans that do not rely on the homeowner to apply for a loan secured by the borrower's home.

Of the proposed Rules regarding HELOCs:

1. We support requiring more detailed and transaction-specific disclosures to consumers before account opening. HELOCs can be hard for some consumers to understand, and the use of general, non transaction-specific disclosures can only further confuse consumers. The proposed revisions are helpful to promoting consumer understanding and consumer choice.

   Yet, we urge the Board to go further by:

   - **Requiring that these disclosures be provided in the language of the negotiation**, including at a minimum Spanish, Chinese, Tagalog, Korean and Vietnamese.

   - **REQUIRING (not merely PERMITTING) creditors to disclose certain optional charges orally or in writing before the consumer agrees to or becomes obligated to pay the charge**. To fall short of requiring the disclosure of such fees runs counter to the stated purposes of TILA - to allow consumers to compare products and to avoid unfair billing.

   - **REQUIRING the disclosure of the effective Annual Percentage Rate (APR) on periodic statements**. The Board's retreat on this point goes to the heart of TILA. How can consumers compare the costs of credit without something as basic as the APR? If the APR appears high for the HELOC or particular services associated with it, consumers may be alerted to the need to explore other credit options. Hiding the effective APR from borrowers certainly does not promote consumer choice and knowledge.

2. We support improving formatting of disclosures so that they are easier for consumers to understand

3. We support strengthening change-in-terms rules so that consumers are alerted to more changes in the terms of their HELOC, are alerted 45 days (as opposed to the current 15 days) before the change takes effect, and are alerted with simplified disclosures. All of this can only enhance the consumers understanding of proposed changes, and the additional 30 days notice enables a consumer to find alternative sources of credit before suffering negative consequences from the lender proposed changes.

4. We support restricting the termination of accounts if borrowers are not 30 days late.

   Yet, we urge the Board to go further by:
   - **Prohibiting termination of accounts that are not 60 days late**. If the Board's intent is to protect consumers from "hair-trigger" terminations based on minor payment infractions, then 60 days is more appropriate. We believe that many borrowers who miss a payment are not in financial distress and will catch up quickly. To allow for termination on day 31 will enable too many "hair-trigger" terminations.

5. We support restricting the suspension or reduction of accounts where there is not a significant decline in property values. The board defines "significant" as a 5% reduction in value for plans with a Combined Loan to Value of 90% or higher at origination, or where the creditor's equity cushion is reduced by 50% on plans with CLTV under 90% at the time of origination.

   Yet, we urge the Board to go further by:
   - **For plans with CLTV at origination of 90% or higher, deeming a "significant" reduction in property value as a 15% reduction**. California communities have suffered from massive property reductions in recent years, and we have seen good consumers lose their HELOC lines through no fault of their own or through no inability to repay on their parts. The Board's proposed 5% trigger would unnecessarily punish many of these consumers despite their ability to repay.

   - **Prohibiting creditors in any instance from suspending or reducing lines for borrowers with a current CLTV below 100%**. For consumers who have been able to pay down their mortgage debt and/or have equity, it is unfair for creditors to arbitrarily reduce their access to credit, especially if creditors originally extended HELOCs based on a high CLTV at the time of origination. Borrowers should not suffer from risk-taking by the creditor, especially where there is no independent basis to believe consumers will not be able to repay the HELOC. Presumably, creditors have underwritten the HELOC based on the consumer's income and ability to repay. The Board has expressed the view in the past that home lending based on the value of the property is indicia of predatory lending.

6. We support restricting the suspension or reduction of accounts if there are certain changes in the credit profile of borrowers.

   Yet, we urge the Board to go further by:
   - **Limiting the "safe harbor" within which creditors can rely on "material changes in a consumers financial circumstances" to suspend or reduce credit from the proposed six months, to a more reasonable two months.**

- **Preventing creditors from relying on late payments of 30 days or fewer to deem a consumer "unable to pay" and therefore subject to credit suspension or reduction**. The Board itself proposes to eliminate late payments of 30 days or less as grounds for termination of an account on the basis of this constituting a "hair-trigger." So, too, creditors should need to identify late payments of at least 60 days before determining that a consumer is unable to pay and being able to suspend or reduce credit.

- **Clarifying that ability to pay should not hinge on what industry imposed default risk category a borrower now occupies**. Ability to repay is a standard that should stand on its own. Outlining various ways in which creditors can determine a consumer is unable to repay her loan will only enable creditors to reduce or revoke lines without any meaningful nexus between the line reduction and the creditor's reasonable assurance of being repaid.

- **Clearly prohibiting reliance on credit score declines as a basis for determining a borrower is unable to repay a HELOC**. The Board notes in the proposed rules that a Board study has observed that credit scores can drop for reasons unrelated to the consumer's actual failure to pay obligations.

- **Applying property valuation requirements retroactively**. Any homeowner that saw her HELOC suspended or reduced by a creditor without any proper property-specific valuation being conducted should have the HELOC terms reinstated immediately.

- **Confirming that the use of regional property value declines in determining whether and under what terms HELOCs are to be offered raises fair lending concerns, and that any attempt to adopt stringent lending guidelines in certain communities that has a disproportionate and negative impact on borrowers and communities of color is strictly prohibited and subjected to referral to the Department of Justice**.

7. We support creating a right on the part of the borrower to request reinstatement of their account.

   Yet, we urge the Board to go further by:

   - **Requiring that creditors monitor accounts to determine if and when the conditions for a credit freeze or reduction no longer exist AND allowing borrowers to request reinstatement of the loan terms**.

   - **Requiring that if creditors do not come to a decision within the 30 days of a borrowers request for reinstatement, that the creditors reinstate the HELOC**. Borrowers should not suffer from creditors' failures to investigate in the proposed time frame.

   - **Preventing creditors from charging borrowers for the cost of investigation in every instance**. The Board proposes to allow borrowers one free request for reinstatement after each time a line is frozen or reduced. We believe that meaningful opportunities to assert rights come without fees, and we doubt that there is evidence that consumers have abused this process by unnecessarily or recklessly asking for investigations of frivolous claims that conditions no longer exist to justify a frozen or reduced line.

- **Notifying consumers in notices of reinstatement results that consumers have the right to protest this decision to the creditors' regulator**. It is not sufficient to create a process completely controlled by a creditor that has already shown itself interested in reducing the borrower's credit. There must be a way for consumer to complain, if not appeal, to any outside entity. The creditor's regulator should be listed on the notice as a place for dissatisfied consumers to turn.

Expand CRA.

One regulatory framework that has provided benefits to both financial institutions and their communities is the Community Reinvestment Act and its regulations. CRA activity has resulted in trillions of dollars of credit to communities seeking to build wealth, and has generated profits for banks. Yet the Board and sister agencies have allowed industry practices to outpace CRA, limiting its potential to both provide greater benefits and to prevent financial abuse of neighborhoods by regulated entities.

The Board and other banking regulators should revise their outdated definitions of what constitutes a "branch" for purposes of determining a bank's CRA assessment area of responsibility. Regulators should look instead to where banking companies lend and where their depositors live in determining where the banks' reinvestment obligations live. If a bank is taking deposits from a community (even if deposits are made over the internet, or mailed or electronically sent to bank headquarters in a clear attempt to evade CRA regulations), or is making profits in a community through the sale of loan or other products, it should have a duty to reinvest those dollars back into the community. If the Board had so interpreted CRA over the last few years, it could have resulted in many more good loans crowding out the bad, and mitigated the growing impacts of our current crisis. A case in point is Countrywide Bank, a very large financial institution with over $100 billion in assets that made problematic loans and took deposits heavily from California and throughout the United States, but was deemed by the regulators to have CRA responsibility solely in Arlington, Virginia and Plano, Texas.

Additionally, all subsidiaries and affiliates of bank holding companies must be scrutinized by the Board and subject to CRA regulation, not merely at the election of the holding companies.

Finally, disclosure regulations relating to CRA should be expanded to make more transparent the activities of banks in providing loans to small businesses and in preventing foreclosures through loan modifications. Specifically, the Board should amend Regulation B to allow for the disclosure of race and ethnicity data of small business owners so that small business data can more closely mirror HMDA data in identifying potential discriminatory lending practices. Similarly, the Board should expand Regulation C to include reporting on loss mitigation and loan modification data, including the race and ethnicity of borrowers seeking loan modifications. This data is currently being collected as part of the Making Home Affordable Modification Program, so does not pose a new or undue burden on servicers, and it is critically needed in light of the fair housing concerns being raised by community groups and borrowers, as outlined above.

Conclusion.

We again thank the Board for addressing many issues of great importance to consumers and communities. At the same time, we urge the Board to take the strongest possible action to:

- Simplify all TILA disclosures

- Ban Yield Spread Premiums
- Ban steering of borrowers into inappropriate products
- Broaden the definition of Annual Percentage Rate to include all loan costs to truly promote consumer understanding and choice
- Require written translations in the same language as the language of the credit negotiation
- Protect HELOC borrowers from bad loans and arbitrary reductions and terminations of credit lines.
- Expand CRA regulations to broaden CRA responsibilities and fair lending reporting requirements.

If you have further questions regarding these comments, please feel free to contact Kevin Stein of California Reinvestment Coalition (415-864-3980), or Lisa Sitkin of Housing and Economic Rights Advocates (510-271-8443).

Thank you very much for considering our views.

Very Truly Yours,

California Reinvestment Coalition
Housing and Economic Rights Advocates
Bet Tzedek Legal Services
California Alliance for Retired Americans
California Capital Financial Development Corporation
California Resources and Training (CARAT)
California Rural Legal Assistance
Causa Justa: Just Cause
CHARO Community Development Corp.
Chinatown Community Development Center
City of Oakland
Community Legal Services of East Palo Alto
Contra Costa Interfaith Supporting Community Organizations (CCISCO)
East Palo Alto Council of Tenants (EPACT)
Fair Housing Council of the San Fernando Valley
Fair Housing Council of San Diego
Fair Housing of Marin
Housing California
Housing Opportunities Collaborative
Inland Fair Housing and Mediation Board
Law Foundation of Silicon Valley
Legal Aid Foundation of Los Angeles
Neighborhood Legal Services of Los Angeles
Pacific Asian Consortium in Employment (PACE)
Public Counsel
Rural Communities Assistance Corporation (RCAC)
STAND Affordable Housing Program
USF Law School Predatory Lending Clinic
Valley Economic Development Center
Vermont Slauson EDC